

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

<b>JASON DOUGLAS, individually and on</b>	)	
<b>behalf of all others similarly situated,</b>	)	<b>Case No. 1:14-cv-01741</b>
	)	
	)	
	)	<b>Judge Gary Feinerman</b>
<b>v.</b>	)	
	)	
<b>THE WESTERN UNION COMPANY, a</b>	)	
<b>Delaware corporation,</b>	)	
	)	
<b>Defendant.</b>	)	

**THE WESTERN UNION COMPANY’S RESPONSE TO  
OBJECTIONS TO FINAL APPROVAL OF SETTLEMENT**

Defendant The Western Union Company (“Western Union”) submits the following memorandum in response to the objections to final approval filed by John Knott, Bethany Price and Patrick and Pamela Sweeney:

**I. INTRODUCTION**

The most important factor in determining whether a settlement is fair, reasonable and adequate is the strength of plaintiff’s case compared to the terms of the proposed settlement. See, e.g., In re Northfield Labs., 2012 U.S. Dist. LEXIS 88667, \*7-8 (N.D. Ill. 2012). The objectors in this case, however, completely ignore this factor and assume, with no analysis, that they and all members of the Settlement Class are somehow entitled to either \$500 or \$1500 based upon the bare allegations made in the Complaint. See, e.g., Objection of J. Knott (Dkt. #67), at 3-4; Objection of B. Price (Dkt. #69), at 2, 4-5, 9-11. Accordingly, these objections fail to account for material weaknesses in the claims asserted in the Complaint, defenses available to

Western Union and the high probability that Plaintiff and the proposed Settlement Class could recover nothing. See disc. infra at 2-9.<sup>1</sup>

When these defenses are properly considered, it is abundantly clear that the proposed Settlement is fair, reasonable and adequate and in the best interest of the Settlement Class. See disc. infra at 2-9. Indeed, the four members of the Settlement Class who filed objections represent a miniscule portion of the Settlement Class as a whole, and the fact that there is an exceedingly low rate of objections and opt-outs only further confirm the fairness, reasonableness and adequacy of the Settlement itself.<sup>2</sup>

## **II. DISCUSSION**

For the reasons discussed herein as well as those set forth in the submission by Plaintiff and in Western Union's submission to the Court on April 1, 2016, Western Union respectfully requests that the objections to final approval of the Settlement be overruled and that the Court enter an order granting final approval of the Settlement Agreement. See disc. infra at 2-9.

### **A. Plaintiff And Members Of The Settlement Class Would Be Required To Arbitrate Their Claims**

As an initial matter, Plaintiff (as well as many, if not all, of the members of the Settlement Class) would likely be required to arbitrate his claims on an individual basis. See

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<sup>1</sup> Unless otherwise defined herein, capitalized terms have the meaning ascribed to them in the Settlement Agreement. See Settlement Agmt. (Dkt. #52-1). In addition, unless stated otherwise, all emphasis is supplied, and all internal citations and quotations are omitted from any quoted material.

<sup>2</sup> Western Union understands that Class Counsel are responding in detail to the objections lodged to the proposed Settlement. Western Union does not wish to burden the Court with duplicative briefing but believes that there are certain matters that warrant a separate response from Western Union, and it therefore responds to those portions herein. See disc. infra at 2-9. In addition and also in an effort to minimize duplicative briefing, Western Union incorporates herein the memorandum it submitted on April 1, 2016 regarding the scope of the Settlement Class and the objections of Ms. Price to the class definition and notice. See Western Union's Supp. Submission Regarding Scope of Settlement Class (Dkt. #94).

disc. infra at 3-5.<sup>3</sup> When Plaintiff registered for Western Union services on its website, westernunion.com, he was required to acknowledge that he had “read and agree[d] to the Online Privacy Statement and Terms & Conditions and agree[d] to receive communications electronically according to the E-Sign Disclosure and Consent Notice.” See Pl. Registration Page Ex. A, at 1. Indeed, no member of the Settlement Class would have been permitted to register with Western Union on its website without first clicking on the dialog box and acknowledging that he or she had agreed to the Terms & Conditions. See id.<sup>4</sup>

Western Union’s Terms & Conditions, however, include an express agreement to arbitrate any disputes on an individual basis. See Terms & Conditions, Ex. B, at ¶ 4.

**4. RESOLUTION OF DISPUTES:** Unless You opt out as set forth below, any dispute arising from or relating to this transaction shall be resolved by final and binding arbitration. The arbitrator shall also decide what is subject to arbitration. The arbitration will be administered by National Arbitration and Mediation (‘NAM’) under its Comprehensive Dispute Resolution Rules and Procedures, which are available at [www.namadr.com/downloads.cfm](http://www.namadr.com/downloads.cfm) or by writing to 990 Stewart Ave., 1st Fl., Garden City, NY, 11530 and explain how to initiate arbitration. You will be responsible for up to \$125 of the administration fees. Western Union may reduce this amount if you demonstrate hardship. This agreement is governed by the Federal Arbitration Act, and any award shall be subject to judicial confirmation. **Any arbitration shall take place on an individual basis; class actions or arbitrations are not permitted.** If any part of this paragraph is deemed invalid, it shall not invalidate the other parts. If NAM is unavailable, the parties or a court will select another arbitrator. You may opt out

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<sup>3</sup> Despite the Objectors contention that the viability of Western Union’s defenses were never tested, the Parties discussed these defenses at length prior to and during mediation, with Western Union providing a copy of the motion to compel arbitration that it intended to file as well as documents supporting that motion. See, e.g., Objection of B. Price (Dkt. #69), at 9-11. As such, Class Counsel was fully able to evaluate the viability of Western Union’s defenses and the Settlement appropriately accounts for the weaknesses in Plaintiff’s claims and Western Union’s defenses thereto. See, e.g., Schulte v. Fifth Third Bank, 805 F. Supp. 2d 560, 587-89 (N.D. Ill. 2011) (formal discovery and motion practice is not necessary if class counsel had full access to information and an opportunity to weigh the benefits and risks of settlement).

<sup>4</sup> As noted in Western Union’s April 1, 2016 submission, the Settlement Class is derived entirely of customers who transacted business with Western Union through its website and who, therefore, would have been required to acknowledge the Terms & Conditions. See Western Union’s Supp. Submission Regarding Scope of Settlement Class (Dkt. #94) at 2-7.

of arbitration within 30 days after initiating a transaction by calling 1-800-325-6000 (WU). IF YOU DO NOT OPT OUT, YOU WILL WAIVE ANY RIGHT TO A TRIAL BY JURY OR JUDGE IN COURT AND ANY RIGHT TO PARTICIPATE IN A CLASS ACTION.

Id. (emphasis in original).

There is, of course, a strong federal policy in favor of arbitration. See, e.g., Sweet Dreams Unlimited, Inc. v. Dial-A-Mattress, 1 F.3d 639, 641 (7th Cir. 1993). Indeed, all of the requirements for the Court to compel arbitration (i.e., an agreement to arbitrate and a dispute that falls within that agreement ) are plainly present in this case. See Zurich Am. Ins. Co. v. Watts Indus., Inc., 466 F.3d 577, 580 (7th Cir. 2006). Plaintiff and any member of the Settlement Class who registered on Western Union’s website would have affirmatively agreed to the Terms & Conditions, including the arbitration agreement by checking the dialog box confirming that he had “read and agree[s] to the . . . Terms & Conditions.” Pl. Registration Page, Ex. A, at 2. Moreover, the arbitration agreement is broad and encompasses “any dispute arising from or relating to” transaction with Western Union. See Terms & Conditions, Ex. B, at ¶ 4; Sweet Dreams, 1 F.3d at 642.<sup>5</sup> Not surprisingly, courts have routinely compelled arbitration based upon similar agreements. See, e.g., Sherman v. AT&T, 2012 WL 1021823, \*3 (N.D. Ill. Mar. 26, 2012); Hubbert v. Dell, 835 N.E.2d 113, 120-22, 126 (Ill. App. Ct. 5th Dist. 2005).

Absent settlement, the presence of this arbitration provision would impact not only Plaintiff’s ability to recover personally, but it would also clearly impact his ability to recovery on a class-wide basis, both of which should plainly be considered in evaluating whether the proposed Settlement is fair, reasonable and adequate. See, e.g., EEOC v. Hiram Walker, 768 F.2d 884, 890 (7th Cir. 1985) (“The court noted the great uncertainty about the proper resolution

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<sup>5</sup> The arbitration agreement even delegates to the arbitrator the issue of arbitrability. See Terms & Conditions, Ex. B, at ¶ 4; see also, e.g., Air Line Pilots v. Midwest Express Airlines, 279 F.3d 553, 555-56 (7th Cir. 2002).

of a number of legal issues involved, any one of which, if resolved in favor of [defendant], would result in no recovery for [the class], even those who received benefits under the decree. . . . on balance, the substantial risks of litigation and the time and expense that a long trial would require justified the settlement.”).<sup>6</sup>

**B. The Claims Of Plaintiff And The Members Of The Settlement Class Would Be Subject To Summary Adjudication Because They Consented To Receive Text Messages**

Even if Plaintiff’s claims were not subject to arbitration, Plaintiff’s claims, and those of the members of the Settlement Class, would be subject to summary adjudication, because Plaintiff and the members of the Settlement Class otherwise consented to receive text messages, barring them from recovering under the Telephone Consumer Protection Act (“TCPA”). See disc. infra at 5-8.

While “telemarketing” calls or “advertisements” require “express written consent” (47 C.F.R. § 64.1200(a)(2)), other types of messages generally require only “express consent” (47 C.F.R. § 64.1200(a)(1)), a less demanding standard that is satisfied when a recipient knowingly provides his or her phone number to the company that calls him or her. See, e.g., Martin v. Comcast, 2013 WL 6229934, \*3 (N.D. Ill. 2013) (concluding recipient provided express consent by simply providing a telephone number to Comcast when signing up for cable services); Saunders v. NCO Fin., 910 F. Supp. 2d 464, 467 (E.D.N.Y. 2012) (“[A]uthorities are almost unanimous that voluntarily furnishing a cellphone number to a vendor or other contractual counterparty constitutes express consent.”); see also In the Matter of Rules & Regulations

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<sup>6</sup> The fact, of course, that it would not be feasible for most (if not all) members of the Settlement Class to pursue their individual claims in arbitration on a non-class basis would not be a basis for refusing to fully enforce the arbitration agreement, as the United States Supreme Court made very clear in Italian Colors. See American Express v. Italian Colors Rest., 133 S.Ct. 2304, 2308-12 (2013).

Implementing the TCPA of 1991, 7 FCC Rcd 8752, 8769 (1992) (“[P]ersons who knowingly release their phone numbers have in effect given their invitation or permission to be called at the number which they have given, absent instructions to the contrary.”). When registering with Western Union on its website, Plaintiff knowingly and voluntarily provided his phone number to Western Union, thus providing express consent to be contacted for purposes other than marketing or advertising. See id.; see also Pl. Registration Page, Ex. A,

The text messages at issue in this case are not telemarketing or advertising messages, as they are not “message[s] for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services;” nor are they “advertising the commercial availability or quality of any property, goods, or services.” 47 C.F.R. § 64.1200(f)(1), (12). Instead, the messages received by Plaintiff and the members of the Settlement Class are opt-in text messages asking them to confirm that they wished to receive future text messages. See Compl. (Dkt. #1) at ¶ 20 & Ex. A (“Reply Y for periodic automated ad texts; Consent not required to purchase. STOP2stop; Msg&DataRatesApply.”); see also Price Response to Motion for Discovery (Dkt. #77) at McDonald Decl. at Ex. A. Courts, in turn, have repeatedly held that such messages require only express consent. See, e.g., In the Matter of GroupMe, Inc./skype Commc’ns S.A.R.l Petition for Expedited Declaratory Ruling; Rules & Regulations Implementing the TCPA of 1991, 29 FCC Rcd. 3442, 3442 (2014) (“[T]ext-based social networks may send administrative texts confirming consumers’ interest in joining such groups without violating the TCPA” so long as the consumer has provided prior express consent); Baird v. Sabre Inc., 995 F. Supp. 2d 1100, 1101, 1106-07 (C.D. Cal. 2014) (concluding user provided express consent to receive opt-in message to sign up for future flight notification services when user entered phone number when purchasing ticket on airline website).

In addition, members of the Settlement Class may have consented to receive text messages in other ways.<sup>7</sup> See disc. infra at 7-8. For example, once customers have registered for an account on westernunion.com, they can consent to receiving SMS messages by navigating to the “Notifications” section on the site, clicking on the “Text/SMS” option and providing their mobile number. See Notification Page, Ex. C. The text immediately below the box in which customers provide their mobile numbers clearly informs them that they are consenting to receive text messages:

By checking the Text/SMS box, you authorize Western Union and its affiliates to text you offers/messages; you may revoke this authorization at any time. Standard message and data rates may apply. Reply HELP for help. Reply STOP to stop.

Id. Further, customers who initiate Western Union money transfers at retail agent locations may complete a “To Send Money” form, which clearly informs the customer that by completing the form, he or she is consenting to receive text messages:

By completing, you authorize us to send you text message notification(s) about your money transfer status, including notifying you when the receiver picks up funds. Standard message and data rates may apply.

Western Union’s Supp. Submission Regarding Scope of Settlement Class (Dkt. #94), at Ex. 3 at ¶ 8 & Ex. A; see also id. at Ex. 3 at ¶ 9 & Ex. B.

The TCPA, of course, exempts any “call made . . . with the prior express consent of the called party.” 47 U.S.C. § 227(b)(1). Because Western Union received consent to send text messages from Plaintiff and members of the Settlement Class, there is a strong likelihood that members of the Settlement Class would recover nothing at all, weighing strongly in favor of a

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<sup>7</sup> Determining which members of the Settlement Class agreed through other means to receive text messages would, of course, require individual inquiries that would be utterly inconsistent with class treatment of the proposed class claim, as it would pose enormous manageability problems. See, e.g., Wilkins v. HSBC Bank Nevada, 2015 WL 890566, at \*6 (N.D. Ill. 2015). But see Amchem v. Windsor, 521 U.S. 591, 620 (1997).

settlement. See Wilkins, 2015 WL 890566, at \*6 (approving TCPA settlement and noting that the issue of consent would pose a significant obstacle to recovery); Martin v. Caterpillar, 2010 WL 3210448, \*2 (C.D. Ill. 2010) (settlement “represent[ed] a significant boon to class members” when it appeared there were many obstacles to potential recovery on the merits); disc. supra at 5-7.

### **C. Plaintiff And Members Of The Settlement Class Would Otherwise Face Challenges Litigating This Case**

In addition to the substantial weaknesses in the merits of their claims discussed above, Plaintiff and the members of the Settlement Class would also face procedural hurdles that would make litigation costly and uncertain. See disc. infra at 8-9.

Many aspects of the TCPA are currently unsettled, and Plaintiff and the members of the Settlement Class risk an adverse ruling that could otherwise extinguish their claims. See Wilkins, 2015 WL 890566, at \*7. For example, there is an appeal pending before the United States Court of Appeals for the District of Columbia Circuit challenging the July 10, 2015 Declaratory Ruling and Order of the Federal Communications Commission (“FCC”). See ACA Int’l, et al. v. FCC, No. 15-1211 (D.C. Cir. Nov. 25, 2015). Among other things, the appeal challenges whether the FCC interpreted the definition of an automatic telephone dialing system (“ATDS”) in an unlawful manner which turns on the equipment’s potential capabilities to generate random numbers rather than its present abilities to do so. See Brief of Petitioner at 4, ACA Int’l, et al. v. FCC, No. 15-1211 (D.C. Cir. filed Nov. 25, 2105) (Dkt. #23). If the appellate court were to determine that an ATDS requires the present capacity to “store or produce telephone numbers to be called, using a random or sequential number generator,” that ruling would present a new defense for Western Union and would likely prove fatal to Plaintiff’s



claims. See In re Capital One Tel. Consumer Prot. Act Litig., 80 F. Supp. 3d 781, 791-92 (N.D. Ill. 2015).

In addition, there are several matters that have not been addressed by the Seventh Circuit, including whether the TCPA as interpreted by the FCC's 2012 regulations violates the First Amendment as well as whether text messages properly fall within the definition of a "call" under the TCPA (see 47 U.S.C. § 227(b)(1)). An unfavorable ruling on any of these issues would undermine Plaintiff's claim as well as the claims of the proposed class. See Wilkins, 2015 WL 890566, at \*6-7.

In sum, when the material weaknesses in the claims of Plaintiff and the Settlement Class are considered along with the risks of litigation, it is abundantly clear that the proposed Settlement is more than fair, reasonable and adequate. See, e.g., In re Capital One, 80 F. Supp. 3d at 791-92 ("In light of Capital One's potentially meritorious defenses and the legal uncertainty concerning the application of the TCPA, the court concludes that Plaintiffs would probably face an uphill battle proceeding to trial and, once there, obtaining relief. The settlement provides value that is fair considering the very real possibility that Plaintiffs may recover nothing if they were to proceed further with the litigation."); Schulte, 805 F. Supp. 2d at 584 (approving settlement as fair, reasonable and adequate when it "provide[d] immediate value to the Class Members that [was] well within the range of -- and may in fact significantly exceed -- their expected recovery from proceeding to trial").<sup>8</sup>

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<sup>8</sup> Some of the Objectors also argued that the Settlement is not fair, reasonable or adequate because the Settlement Class is compensated on a per person rather than per call basis. See, e.g., Objection of J. Knott (Dkt. #67), at 4. As discussed in detail in Western Union's April 1, 2016 submission regarding the scope of the Settlement Class, however, this objection is not well-founded. See Western Union's Supp. Submission Regarding Scope of Settlement Class (Dkt. #94) at 3-5. The text messages at issue are single, opt-in text messages. See id. If a customer does not reply and provide consent to receive additional text messages, there are few

### III. CONCLUSION

Western Union respectfully requests that the Court overrule the objections filed by John Knott, Bethany Price and Patrick and Pamela Sweeney and grant final approval to the Settlement Agreement. Western Union further requests such other relief as the Court deems appropriate.

Date: April 4, 2016

Respectfully submitted,

/s/Kathleen P. Lally

One of the Attorneys for Defendant  
The Western Union Company

Mark S. Mester

mark.mester@lw.com

Kathleen P. Lally

kathleen.lally@lw.com

LATHAM & WATKINS LLP

330 North Wabash Avenue, Suite 2800

Chicago, Illinois 60611

Telephone: (312) 876-7700

Facsimile: (312) 993-9767

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(...continued)

circumstances under which he or she would receive a second message. See id. Attempting to compensate the Settlement Class per text message would have been disproportionately expensive and time consuming, particularly given how few members of the Settlement Class are likely to have been affected, and would have required inquiry into each class member's individual account. See Wilkins, 2015 WL 890566, at \*8.

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<b>JASON DOUGLAS, individually and on</b>	)	
<b>behalf of all others similarly situated,</b>	)	<b>Case No. 1:14-cv-01741</b>
	)	
	)	
	)	<b>Judge Gary Feinerman</b>
<b>Plaintiff,</b>	)	
<b>v.</b>	)	
	)	
<b>THE WESTERN UNION COMPANY, a</b>	)	
<b>Delaware corporation,</b>	)	
	)	
<b>Defendant.</b>	)	

**EXHIBITS TO THE WESTERN UNION COMPANY’S RESPONSE TO  
OBJECTIONS TO FINAL APPROVAL OF SETTLEMENT**

Exhibit A: Plaintiff’s Registration Page

Exhibit B: Terms & Conditions

Exhibit C: Notification Page

# **EXHIBIT A**

## Register

All fields are required unless labeled optional.

### Account information

Email address:

REDACTED@gmail.com

You'll always use your email address to log in.

Create password:

\*\*\*\*\*

Password requirements:

- At least 8 characters long
- One lowercase letter and
- One UPPERCASE letter
- One number or non-alpha character

Re-enter password:

\*\*\*\*\*

NOTE: Your password can't be the same as your email address/username.

First name:

jason

Last name:

douglas

### Contact information

We use this information to verify your identity, and to contact you in case of a problem.

Address line 1:

REDACTED

The address can't contain special characters.

Address line 2 (optional):

City:

Highland Park

State:

IL : Illinois

ZIP Code:

60035

Primary phone number:

1 REDACTED 9551

Don't include hyphens. (e.g. 4445559999)

☐ This is my mobile number

Mobile phone number (optional):

1 REDACTED 8443

Don't include hyphens. (e.g. 4445559999)  
Standard message and data rates apply.

### Security questions

We'll ask you these questions if you ever need to reset your password.

Birthdate:

Month / Day / Year

Question 1:

- Choose -

Answer:

XX

Question 2:

- Choose -

Answer:

Xxxxx

Question 3:

- Choose -

Answer:

Xxxxx



The text above is not case-sensitive.

ygg0zf

☐ I have read and agree to the [Online Privacy Statement](#) and [Terms & Conditions](#) and agree to receive communications electronically according to the [E-Sign Disclosure and Consent Notice](#).

[Continue >>](#)

## Register

All fields are required unless labeled optional.

### Account information

Email address:

REDACTED@gmail.com

You'll always use your email address to log in.

Create password:

\*\*\*\*\*

Please check password.

Re-enter password:

\*\*\*\*\*

Re-enter your password.

Password requirements:

- At least 8 characters long
- One lowercase letter and
- One UPPERCASE letter
- One number or non-alpha character

NOTE: Your password can't be the same as your email address/username.

First name:

jason

Last name:

douglas

### Contact information

We use this information to verify your identity, and to contact you in case of a problem.

Address line 1:

REDACTED

The address can't contain special characters.

Address line 2 (optional):

City:

Highland Park

State:

IL : Illinois

ZIP Code:

60035

Primary phone number:

1 REDACTED 9551

Don't include hyphens. (e.g. 4445559999)

☐ This is my mobile number

Mobile phone number (optional):

1 REDACTED 9443

Don't include hyphens. (e.g. 4445559999)  
Standard message and data rates apply.

### Security questions

We'll ask you these questions if you ever need to reset your password.

Birthdate:

Month / Day / Year

Question 1:

- Choose -

Answer:

XX

Question 2:

- Choose -

Answer:

Xxxxx

Question 3:

- Choose -

Answer:

Xxxxx



The text above is not case-sensitive.

ygggzf

☐ I have read and agree to the [Online Privacy Statement](#) and [Terms & Conditions](#) and agree to receive communications electronically according to the [E-Sign Disclosure and Consent Notice](#).

Please acknowledge that you've read the terms and conditions of this service.



Overview

Activity

Rewards

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Profile

## Welcome, Jason

## Pay Bills

Send payments online for your credit cards, car, rent, mortgage, utilities and more.

[Pay bills now»](#)

## Sending money to an inmate?

You can send money to a commissary or telephone account, and it'll usually be deposited the same day.

[Send now»](#)

## Notifications

## Welcome to Western Union!

You'll see important alerts and notifications here (and we'll email them to the address you gave us in your profile, too). You can start sending money right here, also, by clicking the button below.

[Send Money Now »](#)

## Recent activity

[View all activity »](#)

You don't have any activity yet. Once you start sending or receiving money you will see a snapshot of your latest activity here.

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[Money orders](#)

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# **EXHIBIT B**



## Terms and Conditions

**CONSUMER FRAUD ALERT: PROTECT YOURSELF. BE CAREFUL WHEN A STRANGER ASKS YOU TO SEND MONEY, ESPECIALLY FOR INTERNET AUCTIONS, NEWSPAPER OR TELEPHONE OFFERS.** Western Union does not guarantee delivery or suitability of goods or services paid for with Services. Western Union is not an escrow service provider. Customer and Receiver agree not to use Services for escrow purposes.

Notify Western Union immediately if You believe Your Western Union username and password have been lost or stolen or if someone may use them without Your permission.

**1. WESTERN UNION ("WU") MONEY TRANSFER® SERVICES ARE PROVIDED BY WESTERN UNION FINANCIAL SERVICES, INC. ("WESTERN UNION") AND ARE SUBJECT TO THESE TERMS AND CONDITIONS ("AGREEMENT") AND APPLICABLE LAW.** Additional information regarding the Services may be obtained at [www.westernunion.com](http://www.westernunion.com) (<http://www.westernunion.com/>). Service and funds availability depends on certain factors including the Service selected, the selection of delayed delivery options, amount sent, destination country, currency availability, regulatory issues, consumer protection issues, identification requirements, delivery restrictions, agent location hours, and differences in time zones (collectively, "Restrictions"). The designated recipient ("Receiver") may generally receive funds sent by Western Union consumer ("You") at Agent locations in the Expected Payout Location. For transactions sent within the U.S., the Expected Payout Location generally means any Agent location in the destination state or U.S. territory You identify. For transactions sent outside the U.S., Expected Payout Location generally means any Agent location in the destination country You identify. The Services offered by Telecomunicaciones de Mexico ("Telecomm") are only available at Telecomm locations. You may pay for the Services by using a U.S. issued Visa or MasterCard credit card, or debit card issued by or through a financial institution located in the U.S. ("Bank Card"). Alternatively, you may pay with cash at a Western Union agent location or using Western Union's mobile phone, WUPay or ACH options ("Alternative Payment Options"). The total due is payable before Western Union processes the transaction. If Western Union does not receive authorization from the Bank Card issuer (or your account provider, in the case of Alternative Payment Options), the transaction will not be processed and funds will not be transmitted to the Receiver. Each time You use your Bank Card or Alternative Payment Options to pay for Services, You agree that Western Union is authorized to charge Your designated Bank Card or applicable account for the total disclosed to You relating to the transaction. Receiver will normally receive funds sent by You in cash, check, or a combination thereof; with some Services, funds may be credited to a bank, prepaid or credit card, mobile wallet, or similar account. Receiver may be able to elect a payout method that differs from the payout method You specify; You authorize Western Union to honor Receiver's election of payout method. Receivers who choose to receive funds through a payout method other than cash or in a currency other than the one You selected may incur additional fees to access funds. Certain countries and/or jurisdictions may impose a tax, fee and/or tariff on Your transaction and/or Receiver's receipt of, or access to, transferred funds. Transactions: (i) which exceed certain amounts; (ii) to certain destinations; (iii) that implicate certain regulatory issues or consumer protection issues; or (iv) sent through delayed options may take longer, be subject to dollar limits or be subject to additional Restrictions. Transactions may be reported to applicable authorities. Messaging and notification services may incur additional fees. In some destinations Receiver may be required to provide identification, a test question answer or both to receive funds in cash. Test questions are not an additional security feature and cannot be used to time or delay the payment of a transaction and are prohibited in certain countries. Western Union relies on the information you provide us to send money. Please review all transaction details for accuracy before completing your transaction.

**2. ADMINISTRATION CHARGE:** Transactions not picked up or canceled by You within one year of the send date will be assessed a non-refundable administration charge of up to fifty cents per month from the send date, not to exceed forty-two dollars, which will be deducted from the amount sent (or where such charge exceeds the maximum amount permitted by law, the maximum amount permitted by law).

**3. REFUNDS:** Subject to applicable law: (i) transfers may be canceled for a refund of the principal amount, unless the funds have been picked up or deposited at the time Western Union receives Your written request; (ii) for certain services, excluding Western Union's bill payment and prepaid products and services, Western Union may provide a transfer fee refund if funds are not available within the specified timeframe; and (iii) Western Union may charge You a fee to refund the principal amount back to You in those instances where Receiver rejects Your funds. Qualifying refunds for transfers that begin and end in the United States will be made within 45 days of receipt of Your valid written request. Western Union may issue Your refund through a WU money transfer or Western Union may issue the refund to the credit or debit card that was used to pay for the transaction. In lieu of receiving the refund by WU money transfer, You may request Western Union to mail You a check in the amount of the refund. Where required by law, refunds associated with certain international transfers may be eligible for different treatment.

**SPECIAL TERMS FOR INTERNATIONAL TRANSFERS:** Notwithstanding the foregoing, and subject to applicable law, international transfers may be canceled for a full refund of the principal and fees paid within 30 minutes of payment, unless the funds have been picked up or deposited. You may also receive a full refund in certain circumstances if you successfully assert an error or as otherwise provided under applicable law.

The following provision applies only to transactions from California:

**RIGHT TO REFUND:** "You, the customer, are entitled to a refund of the money to be transmitted as the result of this agreement if Western Union does not forward the money received from You within 10 days of the date of its receipt, or does not give instructions committing an equivalent amount of money to the person designated by You within 10 days of the date of the receipt of the funds from You unless otherwise instructed by You. If Your instructions as to when the moneys shall be forwarded or transmitted are not complied with and the money has not yet been forwarded or transmitted You have a right to a refund of Your money. If You want a refund, You must mail or deliver Your written request to Western Union at PO Box 6036, Englewood, CO 80112. If You do not receive Your refund, You may be entitled to Your money back plus a penalty of up to \$1,000 and attorney's fees pursuant to Section 2102 of the California Financial Code."

**4. RESOLUTION OF DISPUTES:** Unless You opt out as set forth below, any dispute arising from or relating to this transaction shall be resolved by final and binding arbitration. The arbitrator shall also decide what is subject to arbitration. The arbitration will be administered by National Arbitration and Mediation ("NAM") under its Comprehensive Dispute Resolution Rules and Procedures, which are available at [www.namadr.com/downloads.cfm](http://www.namadr.com/downloads.cfm) or by writing to 990 Stewart Ave., 1st Fl., Garden City, NY, 11530 and explain how to initiate arbitration. You will be responsible for up to \$125 of the administration fees. Western Union may reduce this amount if you demonstrate hardship. This agreement is governed by the Federal Arbitration Act, and any award shall be subject to judicial confirmation. **Any arbitration shall take place on an individual basis; class actions or arbitrations are not permitted.** If any part of this paragraph is deemed invalid, it shall not invalidate the other parts. If NAM is unavailable, the parties or a court will select another arbitrator. You may opt out of arbitration within 30 days after initiating a transaction by calling 1-800-325-6000 (WU). IF YOU DO NOT OPT OUT, YOU WILL WAIVE ANY RIGHT TO A TRIAL BY JURY OR JUDGE IN COURT AND ANY RIGHT TO PARTICIPATE IN A CLASS ACTION.

**5. LIMITATIONS OF LIABILITY:** IN NO EVENT SHALL WESTERN UNION BE LIABLE FOR DAMAGES WHETHER CAUSED BY NEGLIGENCE ON THE PART OF ITS EMPLOYEES, SUPPLIERS OR AGENTS OR OTHERWISE, BEYOND THE SUM OF \$500 (in addition to refunding the transaction amount and the transfer fee and except as provided in California Financial Code § 2102(c)), UNLESS YOU HAVE OBTAINED A HIGHER LIABILITY LIMIT BY CALLING THE CUSTOMER SERVICE NUMBER ABOVE AND PAYING AN ADDITIONAL FEE. IN NO EVENT SHALL WESTERN UNION OR ITS AGENTS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, OR THE LIKE.

**6. CURRENCY EXCHANGE, INTERNATIONAL SERVICES:** In addition to the transfer fees applicable to this transaction, a currency exchange rate will be applied. United States currency is converted to foreign currency at an exchange rate set by Western Union unless the laws of the Expected Payout Location do not permit Western Union to set an exchange rate. Any difference between the rate given to You and the rate received by Western Union will be kept by Western Union (and its Agents in some cases) in addition to the transfer fees. Subject to applicable

law, the actual or estimated currency exchange rate applicable to Your transaction will be provided to You on the written disclosures provided to You by Western Union in connection with Your transaction. Payouts will generally be made in the national currency of the Expected Payout Location ("Local Currency"). In some countries, You may designate a payout currency other than the Local Currency; however, the alternate currency You choose may not be available at all Agent locations. Western Union is not responsible for the currency exchange rate that will be applied if Receiver chooses to receive a currency other than the currency You selected.

**7. USING AN ACCOUNT:** Where available, Western Union may allow You send money from or to a bank, a prepaid or credit card, an electronic wallet, a biller, or a similar account (collectively, "Accounts"). The bank or other provider of an Account (the "Account Provider") may impose additional fees on an Account. The agreement with the Account Provider governs use of an Account and provides the rights and liabilities of the holder of an Account. Unless required by applicable law, Western Union accepts no responsibility to You or any Account holder for any fees imposed by an Account provider. If the currency You select for a transaction is not the currency in which an Account is denominated, the Account provider may convert the funds at its own currency exchange rate or reject the transfer. Account Services are for personal or individual use only and not for use by or on behalf of any business or legal entity. Western Union may use the Automated Clearing House ("ACH") network, book transfer, electronic funds transfer, wire transfer or other methods to process transactions relating to an Account. Western Union is not responsible for actions taken by the an Account Provider, such as improperly posting a transaction.

**A. IMPORTANT NOTICE FOR USING ACCOUNTS:** MAKE SURE THE ACCOUNT NUMBER, ACCOUNT PROVIDER DETAILS, AND CURRENCY SELECTED ARE CORRECT BEFORE SENDING. IF THE ACCOUNT NUMBER OR ACCOUNT PROVIDER DETAILS ARE INCORRECT, MONEY MAY BE DEBITED OR CREDITED TO THE WRONG ACCOUNT AND MAY NOT BE RECOVERED.

Western Union may rely on information You provide and may rely solely on the Account numbers and identifying numbers that You provide for identifying an Account and/or Account Provider, regardless of whether or not You also provide the name of the Account holder or the name of the Account Provider.

**B. TRANSFERS TO ACCOUNTS:** Receiver's agreement with the Account Provider governs Receiver's rights, liabilities and fees (including fees to transfer cash out of an Account), and the Account Provider may impose its own restrictions regarding funds availability, limits that may be transferred to or held in an Account, hours of operations, holidays or other limitations. In most cases, Receiver must be enrolled in the Account program to receive such a transfer. A Receiver who is not enrolled in the Account program may be able to receive funds at an Agent location and may be subject to additional requirements. Western Union may make money from fees associated with use of Accounts.

**C. TRANSFERS FROM ACCOUNTS:** By initiating a transaction from an Account (an "Account Funded Transaction"), You (i) affirm You are the owner of the Account and have authority to initiate the transaction and (ii) authorize Western Union to initiate electronic debits and credits to Your Account to process and correct errors or if a transaction cannot be completed. Western Union may by law be liable for damages caused by its failure to debit Your Account in accordance with these terms and conditions, in the correct amount or in a timely manner when properly instructed by You. However, Western Union will not be liable where: (1) You do not have enough money available in Your Account; (2) Your Account is closed or withdrawals restricted; (3) the transaction exceeds dollar or frequency limitations imposed by Western Union or Your Account Provider; (4) circumstances beyond Western Union's control (such as flood, fire, power outages, mechanical or system failures); (5) Your Account Provider does not honor a transaction, the transaction is not processed or the transaction is returned by Your Account Provider; (6) Your instructions are lost or delayed in transmission to Western Union; (7) Western Union fails to process your transaction because of a reasonable security concern or the Service option has been discontinued or suspended, or Western Union otherwise advises You that Your request will not be processed; and (8) other exceptions allowed by law.

**D. USING QUICK COLLECT AND WUPAY:** Where available, you may (i) fund a transaction to a biller using Western Union's WUPay Service, provided Western Union receives funds from the Your Account Provider and/or (ii) send a Quick Collect payment to a biller, provided Western Union receives authorization from the Your Account Provider. Western Union is not affiliated with any Quick Collect or WUPay biller and shall have no responsibility or liability with respect to the goods or services You order or receive from the biller. Except as required by law, Western Union has no liability for the wrongful acts, negligence or errors of the biller or for its failure to properly or timely give You credit for funds that You send to it through Western Union.

## **8. USE OF THE WESTERN UNION WEBSITE, MOBILE DEVICE AND TABLET SERVICES**

**A. SMS MESSAGING:** The mobile operators participating with Western Union on 40444 are AT&T, Verizon Wireless, Sprint, T-Mobile, Nextel, Boost, Dobson, and Alltel. If Your mobile operator is not participating, You will not receive a reply to Your messages. Some operators may not support some services at the process offered. Pre-paid users may not be able to participate. Check with Your mobile operator. **Message and Data Rates May Apply. To stop a service at any time, reply STOP to 40444. Text HELP to 40444 to receive help information, reply HELP to any message.** Any text messages You send become Western Union's property. No remuneration is implied or offered.

**B. LOCATION BASED SERVICES:** You acknowledge and authorize that information concerning the location of your mobile device may be used to assess location. Location may be obtained at any time while logged into this website. Location information will not be disclosed to others. You expressly agree that you authorize Western Union to collect and use your location as a part of the Western Union website and eligibility for use of the website.

**C. INTELLECTUAL PROPERTY:** The Western Union website, mobile and tablet device sites and applications (collectively, the "Website"), the Service, the content, and all intellectual property therein (including but not limited to authors, patents, database rights, trademarks and service marks) are owned by Western Union or third parties, and all right, title and interest therein and thereto shall remain the property of Western Union and/or such third parties. The Website and Service may be used only for the purpose permitted by these Terms and Conditions. You may view and retain a copy of the pages of the Website only for Your own personal, non-commercial use. You may not duplicate, publish, modify, create derivative works from, participate in the transfer of, post on the World Wide Web, or in any way distribute or exploit the Website, the Service or any portion thereof for any public or commercial use without the express written consent of Western Union. You shall not (i) use any robot, spider, scraper or other automated device to access the Website or Service; or (ii) remove or alter any author, trademark or other proprietary notice or legend displayed on the Website (or printed pages thereof). The name Western Union and other names and indicia of ownership of the Service are the exclusive marks of Western Union or other third parties. Other product, service and company names appearing on the Website may be trademarks of their owners.

**D. LINKS TO OTHER SITES:** The Website may contain links and pointers to other World Wide Web Internet sites and resources (the "Linked Sites"). Links to any Linked Site do not constitute an endorsement by or association with Western Union or any of its affiliates. Links do not imply that Western Union is associated with or legally authorized to use any trademark, trade name, logo or author symbol displayed in or accessible through the links, or that any Linked Sites are authorized to use any trademark, trade name, logo or author symbol of Western Union or any of its affiliates. You should direct any concerns regarding any Linked Site to such Linked Site's site administrator or webmaster. Western Union does not represent or endorse the accuracy or reliability of, and expressly disclaims, any advice, opinion, statement, or other information displayed or distributed through any Linked Site. You agree that reliance upon any opinion, advice, or information displayed on or otherwise available through any Linked Site shall be at your sole risk.

**9. WESTERN UNION PRIVACY POLICIES:** Western Union may disclose Your personal information to third parties as explained in the Western Union Privacy Statement (WU); to obtain a copy, ask Your Agent, visit [www.westernunion.com](http://www.westernunion.com) (<http://www.westernunion.com>) (WU), or call 1-800-562-2598 (WU). Information disclosed may include Your financial background, Your contact information, Your identification, information about Your transactions with us and other information relating to financial matters. Recipients may include financial institutions, retailers, our service providers, government agencies and direct marketers. You may direct us to limit certain disclosures of Your information to some of these parties. Your choice to limit certain disclosures will apply until You tell us to change Your choice or we delete Your data from our systems. To limit disclosures of Your information (opt out), call 1-800-562-2598 (WU).

**10. GENERAL:** This Agreement, together with all items incorporated by reference, embodies the entire understanding among the parties. It supersedes all prior understandings and cannot be modified orally. Subject to applicable law, Western Union may assign this Agreement to a third party without Your consent. This Agreement is governed by Colorado law without regard to conflicts of law rules. If an Agreement provision is found invalid, remaining provisions shall be valid. Services are directed solely to persons 18 and over. The English language version controls if there is an inconsistency between English and non-English Agreement versions. You and Receiver represent that Your use of Services does not violate this Agreement or any law, including, without limit, laws relating to money laundering, illegal gambling activities, support for terrorist activities or fraud. Information You provide Western Union shall be truthful and complete. You shall indemnify Western Union and its Agents for all losses of any kind (including attorney fees) arising out of any Agreement breach by You or Receiver. Western Union reserves the right to change Services without notice. Western Union and its Agents may refuse to provide Services to any person.

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# **EXHIBIT C**

